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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,174	09/24/2003	Carolina H. Henderson	CH-03-01	7005
27625	7590	07/12/2005	EXAMINER	
MARIAN J. FURST 988 SYCAMORE AVENUE BOULDER, CO 80303			BOGART, MICHAEL G	
			ART UNIT	PAPER NUMBER
			3761	
DATE MAILED: 07/12/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/671,174

Applicant(s)

HENDERSON, CAROLINA H.

Examiner

Michael G. Bogart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 24 September 2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

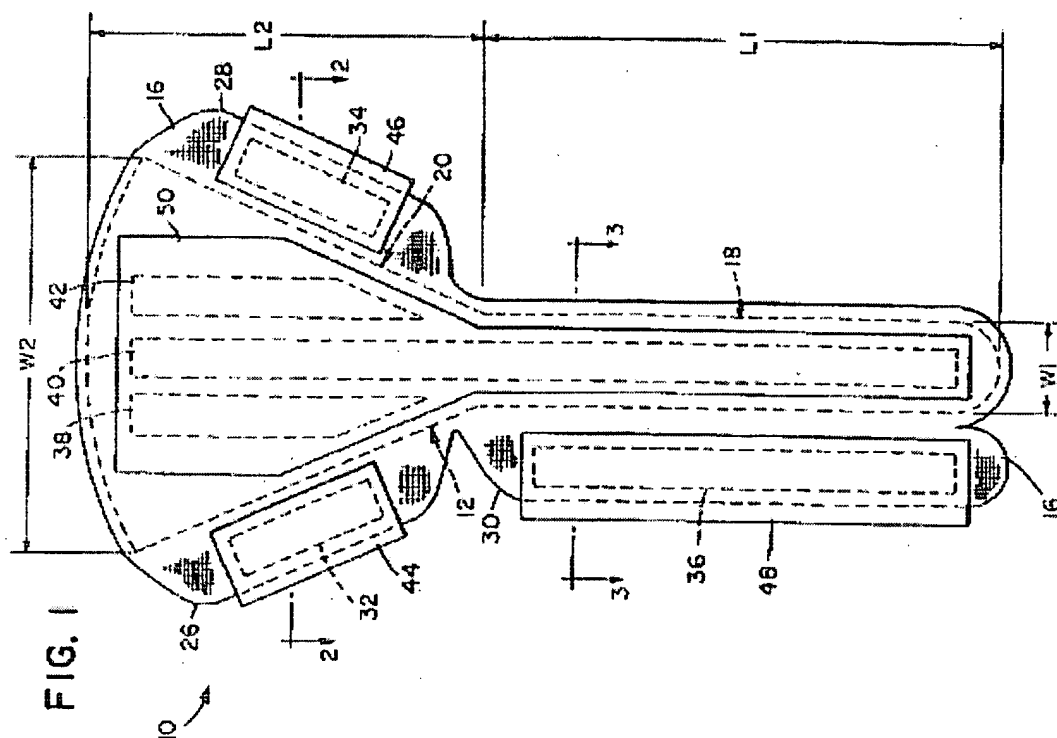
Claims 1-5, 8, 9, 11 and 14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Sturino (US 5,713,886 A).

Regarding claim 1, Sturino teaches a feminine hygiene article (10) for absorption of bodily fluids, comprising:

an elongated absorbent article (10) having a front end (20), a back end (18), a length (L1, L2) between said front and back ends (20, 18) sufficient to extend from a point between the user's buttocks to a point beyond the user's urogenital area, a height less than about 2 inches, and a width sufficiently small to fit between the user's buttocks and legs without causing significant discomfort;

wherein said article (10) is formed such that said back end can be inserted between and retained in position by a user's buttocks while said front end (20) extends forward beyond the user's urogenital area, and does not include an intravaginal portion (column 2, lines 25-41)(see figure 1, below).

Regarding claim 2, Sturino teaches a soft material that is substantially non-irritating to human skin and membranes in the genital area (column 2, lines 41-67).



Regarding claim 3, Sturino teaches that said material is selected from bonded fabrics, woven fabrics, cellulose, paper, and combinations thereof (column 2, lines 41-67).

Regarding claim 4, Sturino teaches that the article (10) comprises a plurality of layers (22, 24, 14) of said material.

Regarding claim 5, Sturino teaches at least one folded layer (26, 28, 30)(column 3, lines 12-20).

Regarding claim 8, Sturino teaches an article length ($L1 + L2$) between about 6 inches and about 10 inches (column 2, lines 26-41).

Regarding claim 9, Sturino teaches a width ($W1$) less than about 1.5 inches (column 2, lines 26-41).

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Regarding claim 11, Sturino teaches that the article (10) is flexible and can conform to the shape of the body area where it is used (column 4, lines 4-13).

Regarding claim 14, Sturino teaches a feminine hygiene kit, comprising:

an elongated absorbent article (10) having a front end (20), a back end (18), a length between said front and back ends (20, 18) sufficient to extend from a point between the user's buttocks to a point beyond the user's urogenital area, a height less than about 2 inches, and a width sufficiently small to fit between the user's buttocks and legs without causing significant discomfort, wherein said article (10) is formed such that said back end (18) can be inserted between and retained in position by a user's buttocks while said front end (20) extends forward beyond the user's urogenital area, and does not include an intravaginal portion; and

an absorbent pad (12) held in placed between the user's panties and her urogenital area (column 2, lines 26-41; column 4, lines 4-13).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Sturino.

Sturino does not expressly disclose an absorbent article having a height between 0.5 and 1.5 inches.

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Mere changes in size alone are not sufficient to patentably distinguish a claimed invention from what is known in the art. *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP § 2144.04.

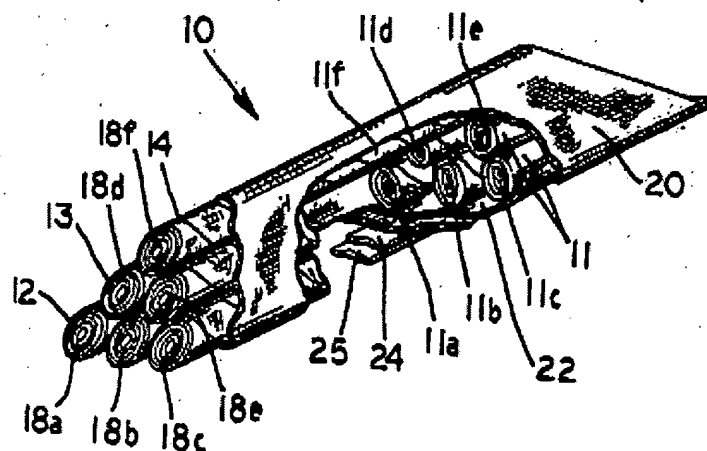
Claims 1, 6 and 7 are rejected under 35 U.S.C. § 103 as being unpatentable over White (US 6,890,326 B2) and Pierce *et al.* (US 4,340,058).

Regarding claim 1, White teaches a feminine hygiene article (10) for absorption of bodily fluids, comprising:

an elongated absorbent article (10) having a front end (54), a back end (14), a length between said front and back ends (54, 14) sufficient to extend from a point between the user's buttocks to a point beyond the user's urogenital area and a width sufficiently small to fit between the user's buttocks and legs without causing significant discomfort;

wherein said article (10) is formed such that said back end (14) can be inserted between and retained in position by a user's buttocks while said front end (54) extends forward beyond the user's urogenital area, and does not include an intravaginal portion (Abstract)(see figure 5, below).

Pierce *et al.* teach an absorbent article (10) that uses coiled fabric to form absorbent cylinders (see figure 1, below).



At the time of the invention, it would have been obvious to one of ordinary skill in the art to select the rolled fabric of Pierce *et al.* to make the absorbent cylinder of White because that would be a ready way to use available flat sheets of gauze for this purpose.

Regarding claim 7, White teaches a device that would be subjected to creasing and twisting forces while being used by a wearer.

Claims 12 and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sturino as applied to claims 1-5, 8, 9, 11 and 14 above, and further in view of Champaigne, Jr. (US 3,665,923).

Sturino does not expressly discuss the biodegradability of that panty liner.

Champaigne, Jr. teaches a flushable and biodegradable sanitary napkin (abstract).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to make the panty liner of Sturino flushable as taught by Champaigne, Jr. in order to facilitate disposal of the device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Larry Schwartz may be reached at phone number (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

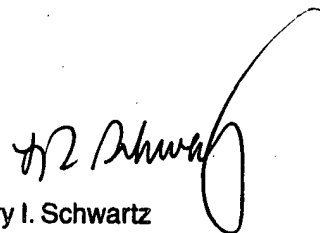
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
22 June 2005



Larry I. Schwartz
Supervisory Patent Examiner
Group 3700